IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1475 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS
THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

SHAH ATULBHAI VADILAL - Petitioner(s)

Versus

STATEOFGUJARAT &2 - Respondent(s)

==========

Appearance :

MR AJ PATEL for Petitioner No(s).: 1.

MR HL JANI, AGP for Respondent No(s).: 1,2.

==========

CORAM :THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS

THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1.The grievance of the petitioner is that his application under Section 28-A of the Land Acquisition Act [hereinafter referred to as 'the Act'] has been dismissed by respondent no. 2 vide order dated August 4-6, 2003 solely on the ground that the petitioner, along with the application had not produced the certified copy of the judgment and award of the Court of the Assistant Judge, Mehsana dated February 29, 2000.

2.We have heard Mr. Patel for the petitioner. He has submitted that the impugned order is erroneous since the petitioner is not required to file certified copy of the judgment and award of the District Court along with the application under Section 28-A of the Act. In support of his say, he has relied on the judgment of the Division Bench of this Court dated April 1, 2005 passed in Special Civil Application No. 2316 of 2004. By relying on the decision rendered in the case of CN PATEL v/s. SPECIAL LAND ACQUISITION OFFICER reported in 2005 (1) GLH at page 88, the Division Bench has quashed and set aside the impugned order of that petition which was also challenged on the ground that the Special Land Acquisition Officer had wrongly dismissed the application under Section 28-A of the Act for want of certified copy of judgment and award of the District Court. According to Division Bench, it was not necessary to do so. However, it clarified that at the time of hearing of the application if the petitioner was called upon to produce the certified copy of the judgment and award on which he wanted to rely, he should place on record the certified copy thereof.

In the submission of Mr. Patel, the impugned order of respondent no. 2 is, therefore, required to be quashed and set aside.

1.We are in total agreement with the submission of Mr. Patel as well as the decision cited before us. It is not in dispute that The application of the petitioner has been disposed of solely on the ground that the certified copy of the judgment and award is not produced. Respondent no. 2 could not have dismissed the application on this ground. The said order is, therefore, required to be quashed and set aside and it is hereby ordered to be quashed and set aside. We now remand the case to respondent no. 2 with a direction that he shall decide the same on its merits, after examining all the relevant record. It is, however, clarified that if respondent no. 2, either wholly or partly, decides in favour of the petitioner, he shall exclude the period between August 2003 and 31stMay, 2005 for the purpose of computing interest on the award amount and also on the

solatium. It is stated by Mr. Patel that the petitioner has now procured the certified copy of the judgment and award on which he wishes to place reliance. If that be so and if the demand is made by respondent no. 2 at the time of hearing, he shall produce the same on record. The petition is, therefore, allowed. Rule made absolute with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

•Pansala.